

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**WARREN DWAYNE VASSER,**

**Defendant.**

**8:17CR372**

**ORDER**

This matter is before the Court on Defendant Warren Dwayne Vasser's Notice of Appeal, ECF No. 108, construed as a Request for Certificate of Appealability, and Clerk's Memorandum regarding Defendant's in forma pauperis status, ECF No. 110.

"An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3)(A). Defendant seeks to appeal the Court's denial of his § 2255 petition, arguing that the Supreme Court's decision in *United States v. Davis*, 139 S. Ct. 2319 (2019), applies to his conviction and sentencing. *Davis* found the residual clause of 18 U.S.C. § 924(c)(3)(B) to be unconstitutionally vague. However, Defendant's crime of bank robbery under 18 U.S.C. § 2113(a), even if committed through intimidation, was a qualifying predicate offense as a crime of violence under 18 U.S.C. § 924(c)(3)(A). *Estell v. United States*, 924 F.3d 1291, 1293 (8th Cir. 2019). The Eighth Circuit has already addressed the application of *Davis* to convictions under § 924(c)(3)(A). *Kidd v. United States*, 929 F.3d 578, 581 (8th Cir. 2019) ("Because § 924(c)(3)(A) applies in this case, the Supreme Court's recent decision in *United States v. Davis* does not afford [petitioner] the relief he seeks.") (citing *Davis*, 139 S. Ct. 2319). Therefore, this Court certifies that

this appeal is not taken in good faith, and Defendant is not permitted to proceed on appeal in forma pauperis.

This Court declined to issue a certificate of appealability when it denied Defendant's petition. Defendant's Notice of Appeal is construed as a request for a certificate of appealability addressed to the judges of the Court of Appeals. Fed. R. App. P. 22(b)(2).

Accordingly,

IT IS ORDERED:

1. Defendant may not proceed on appeal in forma pauperis;
2. The Clerk of Court is directed to forward Defendant's Notice of Appeal, ECF No. 108, construed as a request for a certificate of appealability, to the United States Court of Appeals for the Eighth Circuit;
3. The Clerk of Court shall send a copy of this Order to the United States Court of Appeals for the Eighth Circuit; and
4. The Clerk of Court shall mail a copy of this Order to the Defendant at his last known address.

Dated this 16th day of March, 2020.

BY THE COURT:

s/Laurie Smith Camp  
Senior United States District Judge